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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,872	01/21/2004	Jeffrey Robert Fergusson	114663-008	3145

7590 09/15/2004

Bell, Boyd & Lloyd LLC  
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EXAMINER
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MAYO, TARA L

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 09/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/761,872

Applicant(s)

FERGUSON, JEFFREY ROBER

Examiner

Tara L. Mayo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### *Drawings*

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "4" of Figures 9 and 11. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Specification*

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because it includes phrases which can be implied. On line 1, delete "the present invention discloses a" and insert therefor --A--.  
Correction is required. See MPEP § 608.01(b).

5. The disclosure is objected to because of the following informalities: missing pages.  
Page 7 of the Specification has been omitted. Appropriate correction is required.

*Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 13 through 18 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Herbst (U.S. Patent No. 3,978,674).

Herbst '674, as seen in Figures 1 through 5, shows a two-part rock bolt anchor adapted to be fitted to a tendon of a rock bolt, said anchor comprising:

with regard to claims 13 and 22,

a body (4) engageable with grout (16) into which said bolt is embedded, and having two parts (4' and 4'') shaped to be clamped together over said tendon;

with regard to claims 14 and 15,

wherein said parts include a plurality of complementary protrusions (11) and recesses (the void of extension 11);

with regard to claim 16,

wherein said parts include at least one pair of opposed protrusions form a corresponding pinch point;

with regard to claim 17,

wherein said two parts are substantially identical;

with regard to claim 18,

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wherein said parts are clamped together by a keeper ring (9) shaped to mate with said parts; and

with regard to claim 22,

said anchor being shaped to be press fitted to said tendon.

*Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1 through 3, 10 through 12, 19 through 21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillespie (U.S. Patent No. 5,586,839A) in view of Parker (U.S. Patent No. 4,305,687).

Gillespie '839, as seen in Figures 12 and 13, shows a yielding grouted rock bolt to control the movement of unstable rock strata into which the bolt is installed, said bolt comprising:

with regard to claim 1,

an elongate tendon (12 and 18, in combination); and

a grout engaging anchor (64) fitted to said tendon and thereby at least partially deforming the same;

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whereby in yielding said tendon passes through said anchor and is worked thereby;  
with regard to claim 3,  
wherein said tendon is formed from metal;  
with regard to claim 10,  
wherein said tendon comprises a multi-strand cable;  
with regard to claim 11,  
wherein said tendon comprises a bar (18); and  
with regard to claim 12,  
further comprising a plurality of said grout engaging anchors.

Gillespie '839 shows all of the features of the claimed invention with the exception(s)  
of:

with regard to claim 1,  
a portion of said tendon having a grout slippage means;  
with regard to claims 2 and 23,  
the grout slippage means comprising a tube (having an interior sized to receive the  
tendon);  
with regard to claim 3,  
the tube being made from plastic material; and  
with regard to claim 24,  
the tube being crushed to press fit the tube onto the tendon.

Parker '687, as seen in Figure 7, shows a rock bolt (73) comprising an anchor (various embodiments) and expressly teaches the use of plastic for promoting slight slippage in grout as desired for enhancing the compressive strength of the grout (col. 11, lines 35 through 62).

With regard to claims 1 through 3 and 23, it would have been obvious to one having ordinary skill in the art of earth control at the time of invention to modify the device shown by Gillespie '839 such that it would include a plastic tube as taught to be desirable by Parker '687 for promoting slippage and increasing the compressive strength of the grout in the rock strata.

With regard to claims 19 through 21, the method steps and structural limitations recited therein are inherent to the installation of the device shown by the combination of Gillespie '839 and Parker '687.

With regard to claim 24, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

10. Claims 4 through 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillespie (U.S. Patent No. 5,586,839 A) in view of Parker (U.S. Patent No. 4,305,687) as applied to claim 1 above, and further in view of Herbst (U.S. Patent No. 3,978,674).

Gillespie '839 as modified above by Parker '687 further discloses:  
with regard to claim 4,

said anchor body engageable with said grout.



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Gillespie '839 as modified above by Parker '687 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claim 4,

the anchor being formed in two parts which are clamped together over the tendon portion to fit the anchor thereto;

with regard to claim 5,

the parts including at least one complementary protrusion and recess;

with regard to claim 6,

the parts including a plurality of complementary protrusions and recesses;

with regard to claim 7,

at least one pair of opposed protrusions forming a corresponding pinch point;

with regard to claim 8,

the two parts being substantially identical; and

with regard to claim 9,

the parts being maintained clamped together by keeper rings shaped to mate with the parts.

Herbst '674, as seen in Figures 1 through 5, shows an anchoring device (4) for attachment to a rock bolt (2), the anchoring device having a body formed in two substantially identical parts (4' and 4'') which are clamped together by a keeper ring (9) shaped to mate with said parts, wherein said parts include a plurality of complementary protrusions (11) and

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recesses (the void of extension 11), at least one pair of opposed protrusions forming a corresponding pinch point.

With regard to claims 4 through 9, it would have been obvious to one having ordinary skill in the art of earth control at the time the invention was made to modify the device shown by the combination of Gillespie '839 and Parker '687 such that the anchor device would be formed in two parts as taught by Herbst '674. The motivation would have been for ease of assembly.

### ***Double Patenting***

11. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

12. Claims 1 through 24 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 through 24 of copending Application No. 10/601,024. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

### *Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 703-305-3019. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

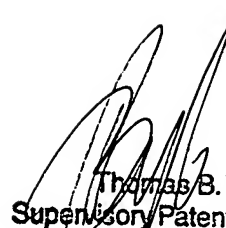
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dlm

10 September 2004

  
Thomas B. Will  
Supervisory Patent Examiner  
Group 3600